



# City of Emeryville

C A L I F O R N I A

## PROFESSIONAL SERVICES CONTRACT

### SECOND AMENDMENT

**THIS SECOND AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT** ("Amendment") is effective as of \_\_\_\_\_ (the "Effective Date"), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION (ETMA)** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

### WITNESSETH THAT

**WHEREAS**, the City and Contractor entered into a Professional Services Contract dated September 13, 2021 ("Contract") for the purpose of retaining the services of Contractor to provide Paratransit Services to residents of the 94608 zip code; and

WHEREAS, the City and Contractor entered into a first amendment of the contract on July 18, 2022 for the purpose of increasing the contract amount and/or extending the termination date of the contract; and

**WHEREAS**, the City and Contractor desire to amend the Contract; and

**WHEREAS**, the public interest will be served by this Amendment.

**NOW, THEREFORE**, the Parties hereto do mutually agree as follows:

#### 1. AMENDMENT

The Parties agree to amend the Contract as checked below:

##### 1.1 Exhibit A

☐ Exhibit A of the Contract is hereby amended in its entirety and replaced with **Exhibit A-***Revision Number*;

**OR**

☒ Exhibit A of the Contract is hereby amended to include the provisions of **Exhibit A-2**, attached hereto and incorporated herein by this reference.

#### FOR CITY USE ONLY

|                |  |             |  |
|----------------|--|-------------|--|
| Contract No.   |  | CIP No.     |  |
| Resolution No. |  | Project No. |  |

**City of Emeryville** | Professional Services Contract Amendment  
REV 06/2020

**1.2 Termination Date**

- ☐ The Parties desire to extend the termination date. Section 1.3 of the Contract is hereby amended to extend the termination date to **JUNE 30, 2024**.

**1.3 Total Compensation Amount**

- ☒ The Parties desire to increase the Total Compensation Amount as set forth in Section 3.2 of the Contract by **SEVEN THOUSAND EIGHT HUNDRED DOLLARS AND NO CENTS (\$7,800.00)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **ONE HUNDRED FORTY NINE THOUSAND EIGHT HUNDRED DOLLARS AND NO CENTS (\$149,800.00)**.

**2. CONTINUING EFFECT OF CONTRACT**

Except as amended by this Amendment, all other provisions of the Contract remain in full force and effect and shall govern the actions of the Parties under this Amendment. From and after the date of this Amendment, whenever the term "Contract" appears in the Contract, it shall mean the Contract as amended by this Amendment.

**3. ADEQUATE CONSIDERATION**

The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

**4. SEVERABILITY**

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

**5. WAIVER**

The City's failure to enforce any provision of this Amendment or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

*SIGNATURES ON FOLLOWING PAGE*

6. SIGNATURE PAGE TO PROFESSESIONAL SERVICES CONTRACT  
SECOND AMENDMENT

IN WITNESS WHEREOF the City and the Contractor have executed this Contract,  
which shall become effective as of the date first written above.

Approved As To Form:

DocuSigned by:  
*John Kennedy*  
2C934D02DB33467...  
\_\_\_\_\_  
City Attorney

Dated: CITY OF EMERYVILLE

\_\_\_\_\_  
City Manager

Dated: EMERYVILLE TRANSPORTATION MANAGEMENT  
ASSOCIATION (ETMA)

\_\_\_\_\_  
Bobby Lee, Board Chair (Signature)

|                             |                                                     |                                                               |
|-----------------------------|-----------------------------------------------------|---------------------------------------------------------------|
| <i>Attach:<br/>W-9 Form</i> | <i>Attach:<br/>Business License<br/>Certificate</i> | <i>Attach:<br/>Insurance Certificate<br/>and Endorsements</i> |
|                             |                                                     |                                                               |

**Exhibit A-2**  
**EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION**  
**8 To Go Paratransit Shuttle**  
**Scope of Work**

1. Services to be Performed by Contractor:
  - a. Contractor shall operate an Americans with Disabilities Act compliant, on-demand shuttle service ("Service") for residents of the 94608 zip code who are age 70 or older or age 18 or older and qualified to use East Bay Paratransit.
  - b. Service shall be provided by the operation of a single vehicle, with the capacity to carry no less than three (3) passengers. To comply with social distancing requirements due to Covid-19 Pandemic, Contractor may reduce passenger capacity to one (1) passenger due to COVID restrictions.
  - c. Service shall operate on weekdays from 9:00am to 12:30pm, and 1:30pm to 4:00pm. Service shall not operate on weekends or City holidays.
  - d. Contractor will provide a qualified driver for the service. A single person shall be assigned to be the "primary driver" to operate the shuttle daily. However, in the event the primary driver is unavailable, a substitute driver shall be provided. Contractor shall provide a cellphone to allow the driver to communicate with the dispatcher and/or passengers. All drivers providing the Service shall, at Contractor's expense, obtain all necessary licenses and permits to provide the Service. All drivers shall maintain all such licenses and permits during the term of this agreement.
  - e. Contractor will provide fuel and maintenance for the vehicle. In the event maintenance required the vehicle to be taken out of service, Contractor will make an attempt to provide an alternate vehicle that meets the minimum requirements of the accessible vehicle described in section 1.d. as needed.
  - f. Contractor shall cooperate with City to fully comply with all terms and conditions of the ACTC Funding Agreement.
  - g. Customer Service: Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of all customer complaints regarding the operations of the Paratransit Shuttle Service. Contractor shall report all complaints to the City within one business day of receipt, including the name and

address of the complainant, date and time of complaint, and nature of complaint. Contractor and City will cooperate to obtain a resolution to reported complaints. A complaint log shall be maintained by Contractor for a period of one (1) year after the date of resolution. Such log shall be kept so that it may conveniently be inspected by representatives of the City upon request. Contractor shall not be held responsible for collecting information that is not provided by complainants.

2. City shall provide:

- a. Shuttle Dispatch Services: City shall schedule the daily passenger manifest. The manifest will contain the following information: Passenger name, phone number, pickup location address, drop-off location address, and time of pickup and drop-off. City shall provide the manifest to the driver for the following day. Same-day rides are to be coordinated by the driver. City shall ensure the daily passenger manifest and same day rides do not interfere with driver's scheduled breaks. City shall also be responsible for validating the eligibility of riders and trip origins and destinations.

3. Compensation:

- a. The "**Total Compensation**" to be paid for all Services by Contractor shall be **ONE HUNDRED FORTY-NINE THOUSAND EIGHT HUNDRED DOLLARS (\$149,800)** and shall be limited to the following items:
  - i. Operation of Paratransit Shuttle: The compensation for operation of Services performed shall be no more than **One Hundred Forty-Nine Thousand Eight Hundred Dollars (\$149,800)** for the period of July 1, 2023 through June 30, 2024 ("**Services Compensation FY 23-24**"). This compensation for operation of Services shall include salary and benefits of the driver of the vehicle utilized to provide the Paratransit Shuttle service, driver training expenditures related to office staff, insurance/claims, marketing, fuel, driver cell phone, supplies and equipment and maintenance of the vehicle utilized to provide the Paratransit Shuttle. Contractor shall provide a monthly report of office staff hours and its salary equivalent, as well as the cost of administrative expenses and any supplies and equipment utilized for the Paratransit Shuttle service. All other costs and expenses of the Paratransit Shuttle shall be eligible for reimbursement, subject to the annual limit described above. Contractor shall issue advance notice to the City if the

operational costs are expected to exceed the limits defined above, so the Parties may negotiate a contract amendment.

- ii. On a monthly basis Contractor shall submit an invoice for Services provided to date. Upon verification, City staff will process an **“Interim Payment”** for Services during the invoice period. In no event shall the total for all Interim Payments exceed the Services Compensation amount for FY 23-24. City may withhold any payments to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation of this Agreement. Approval and payment of any Interim Payment does not constitute acceptance of any future invoices.